

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 7743 of 1989****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

SURESHBHAI HIRABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 10 - Respondent(s)

=====

Appearance :

MR PM BHATT FOR MR MA BUKHARI for Petitioner(s)
MR SIRAJ GORI, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3, 11,
MR SUDHAKAR B JOSHI for Respondent(s) : 4 - 10.

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 08/02/2006****ORAL JUDGMENT**

1. In the present petition, the petitioner has challenged the order passed by the Mamlatdar and ALT on 23rd November 1985 as upheld by the order dated 25.3.86 by the Deputy Collector, Vadodara and by the Gujarat

Revenue Tribunal by the order dated 31st July 1989.

2. The proceedings arise out of the provisions contained in section 84-C of the Bombay Tenancy and Agricultural Lands Act (hereinafter to be referred to as "the said Act"). The petitioner had purchased agricultural land bearing survey No.244 admeasuring 3 acres and 33 gunthas of Sindhrot, Vadodara by registered sale deed dated 18.10.81 from respondent Nos.4 to 11 herein. The Mamlatdar and ALT being prima facie of the opinion that the petitioner was not an agriculturist within the meaning of the said term as contained in the said Act prevailing at the relevant time, issued a show cause notice on 11.1.84 why proceedings under section 84C of the said Act should not be initiated. After hearing the representation of the petitioner, the Mamlatdar passed the impugned order and declared the sale as illegal and gave an opportunity to the parties to restore the original position of the land, failing which it was ordered to be vested in Government. The appeal and revision filed by the petitioner failed and the Deputy Collector and the Gujarat Revenue Tribunal, as noted above, rejected the same.
3. Learned advocate Shri Bhatt appearing for Shri Bhukhari for the petitioner submitted that the only ground on

which the Mamlatdar was pleased to set aside the sale was that the petitioner did not own agricultural land within 8 k.m. Of radius of the land purchased by the petitioner. He submitted that by subsequent amendments in section 2(6) of the said Act, this requirement of having agricultural land within 8 k.m. is deleted. He submitted that such amendment is with retrospective effect and would apply to all pending proceedings before any Court including this Court. He, therefore, submitted that when the amendment was brought into statute book in the year 1995, the present petition was pending and that therefore proceedings under section 84-C of the said Act should be held to have abated. Reliance was placed on the decision of the learned single Judge of this Court in the case of V.A.Patel v. S.P.Thakore, 2002(3) G.L.H.78 wherein similar view was taken.

4.Learned advocate Shri Joshi appearing for respondent Nos.4 to 10, original land owners who had sold the land opposed the petition. He submitted that the proceedings would not abate. In the alternative, he stated that the petitioner still has to establish that the petitioner was an agriculturist owning agricultural lands even outside the radius of 8 k.m. when the sale

transaction took place and only then the ratio laid down by this Court in the case of V.A.Patel (supra) would apply.

5. Having considered the rival submissions and having perused the material on record, it would appear that the Mamlatdar and ALT passed the impugned order primarily on the basis that the petitioner did not own agricultural land within 8 k.m. of the land purchased by him on 18.10.81. There was neither any conclusive material nor any conclusive finding of the Mamlatdar that outside of 8 k.m. of the said land, the petitioner did possess agricultural land. At the relevant time, requirement of the said Act was that a person can be said to be an agriculturist qua a land only the entire area of the land (a) is situated within the limits of a single village, or (b) is so situated that no piece of land is separated from another by a distance of more than 5 miles (i.e. 8 k.ms.), or (c) forms one compact block. In the present case, since condition (a) and (c) did not apply, the Mamlatdar was justified in confining his inquiry with respect to the limited aspect of the matter regarding condition (b). Subsequently, however, the legal position has changed. The provisions of the said Act have been amended with retrospective effect.

Above conditions have been dropped from section 2(6) of the said Act. Such amendment is made applicable to all pending proceedings as held by this Court in the case of V.A.Patel (supra). Therefore, if it is established that on the date the petitioner purchased the suit land the petitioner did own agricultural land outside the radius of 8 k.m. of the land purchased by him, the petitioner would be covered by the amended provisions of section 2(6) of the said Act amended by Gujarat Act No.4 of 1995. In the present case, however, though there was an attempt on the part of the petitioner to suggest that the petitioner owns agricultural lands elsewhere, no material in this regard appears to have been placed before the authorities and in any case, even if produced, such material was not examined by the authorities to verify such a claim factually. In that view of the matter, automatically proceedings under section 84-C of the said Act cannot be ordered to be abated. Before doing that, the petitioner shall have to establish before the revenue authorities that the petitioner did own agricultural land within the State of Gujarat, even outside the radius of 8 k.m. which he cultivated personally. If the authorities come to such a conclusion, amended provisions would take its own

course and the proceedings under section 84-C shall have to be dropped. On the other hand, if the authorities come to the conclusion that the petitioner did not own any agricultural land on the date of sale in question, apparently, even as per the amended provisions of the said Act, the petitioner cannot save the sale transaction in question. Therefore, for this factual inquiry, the proceedings shall have to be remanded to the Mamlatdar.

6. For the above purpose, the impugned orders are quashed and set aside. The proceedings are remanded to the Mamlatdar for fresh consideration and disposal in accordance with law keeping in mind the observations made hereinabove. Rule is made absolute to the above extent with no order as to costs.

7. Both the sides request for early conclusion of the remand proceedings. The Mamlatdar shall endeavour to dispose of the same preferably within a period of three months from the date of receipt of a copy of this order. Both sides are directed to cooperate for such an early conclusion.

(Akil Kureshi, J.)

(vjn)